

THE WAY TO HOLD MINING CLAIMS UNDER THE LOCATION LAW

Opinion Rendered on the Steps Necessary to Hold Mining Claims In Any Part of the United States, By A. H. Ricketts of the San Francisco Bar.

At least \$100 worth of labor or improvements having a direct relation to the present or future development or working of the property must be done or made annually upon unpatented lode and placer claims subsequent to the first calendar year of location. To illustrate: "No annual expenditure, usually called 'assessment work,' is required upon a location made at any time during the year 1910.

There is no particular time within the year for the making of such expenditure. It may be commenced on the last day thereof and be completed within the succeeding year, provided it is then prosecuted without interruption.

The term "labor" signifies prospecting and excavating for purpose of development, and the term "improvement" means tangible and reasonably permanent additions to the location for purposes of development.

The test of sufficiency of the expenditure is the reasonable value thereof, not what was paid nor the contract price, but whether the expenditure tends to facilitate the development, or actually promotes or directly tends to promote the excavation of mineral from, or to improve the property, or be necessary for its care or the protection of the mining works thereon or pertaining thereto.

Payment for assessment work bears upon the value. The amount may be insufficient, although equal to that required by law. Payment made for work not done or improvements not made will not answer, but if the labor is actually done or the improvements are actually made the fact of non-payment therefor is immaterial.

Labor may be done upon or underneath the surface of the location or be away therefrom. Any number of locations held in common may form a group except in oil placer locations, which by law are limited to a group of five. In the case of a group of locations the annual expenditure may be done upon one or off from any one of the locations therein. The expenditure in such case must equal in the aggregate the amount required on all the locations where they are separate and independent. Furthermore, it must be part of a general plan, having in view the development of the group, as labor upon or for a location therein which has no reference to the development of the entire group, will not be sufficient. The burden of proof as to the sufficiency of the expenditure under the general plan to hold all the locations within the group rests with the claimant. He takes the risk of an adverse legal determination of the question.

On lode locations the labor may be upon a vein or lode, but it must be something more than taking rock therefrom from time to time, and testing it for the purpose of finding pay ore. It may consist of unwatering the claim, or in the erection of a flume to carry away water or waste, or for the introduction of water, or the turning of a stream. The erection of machinery or other works of a building, if of benefit to the claim, and not too distant therefrom, or the building of a road may be sufficient.

Reasonable compensation may be allowed for the use of or for the sharpening of tools used, but not the purchase price thereof; the value of powder, fuse, candles, rails and timber actually used, but not for cost of transportation thereof, may be counted; reasonable compensation for the daily use of horses employed in drawing cars, or in raising ore, etc., but not their cost, livery hire, feed or shoeing, may be treated as labor performed; the reasonable value of meals furnished to men while employed in doing the assessment work, but the cost of tableware, house furnishings, provisions, or tobacco, may not be counted as assessment work.

Personal services of a watchman, if necessary to preserve the excavations, structure erected to work the claim, or to preserve personal property, but not when he merely lives upon the claim or warns others

from locating it, are deemed sufficient performance of annual labor. The services of a person employed in planning or superintending the development of a claim, and the erection of a mill and machinery, but those of an agent or accountant, or a person whose time is spent in endeavoring to obtain money for the development of the claim, will not be sufficient.

The expenditure may be made by the locator, his heirs, assigns or legal representatives, by some one who is in privity therewith, or by someone who has an equitable or beneficial interest in the location. A stockholder of a corporation claiming the property, or a receiver appointed by a court are within this rule. If the work be done by a trespasser or a stranger to the title, it will not inure to the benefit of the claimant, but it may be gratuitously contributed. The presumption is that the assessment work was done at the expense of the claimant.

In California, as in other mining states, the local law provides for the making, contesting, recording and legal effect of affidavits of annual expenditure. When recorded within thirty days after the expiration of the "assessment year," such an affidavit presents prima facie evidence of the facts properly stated therein; but it does not prevent other proof by the claimant nor attack of his adversary.

Neither the failure to record the affidavit, nor a mistake therein, will work a forfeiture of the claim.

The failure to perform the annual labor is not necessarily fatal to the rights of the claimant. The law does not provide for a forfeiture merely because of such default. The location is forfeited only when the adverse rights of third parties, by valid relocation, attach thereto.

Forcible adverse possession or threats in the face of a bona fide attempt to do the work or make the improvements will not defeat the

rights of the true owner.

But the mere tendency of patent proceedings prior to payment for the land, the obtaining of a receiver's receipt thereon through fraud, the pendency of court proceedings or the rendition of a judgment therein, are not sufficient grounds for non-performance of the annual expenditure.

To "resume work" is to begin work in good faith, and diligently prosecute the same to completion before adverse relocation is perfected. In such event the rights of the claimant are precisely what they were before default.

Work is not "resumed" by the mere purchase of material nor the mere bringing of the same upon the claim.

In conclusion, it must be borne in mind (particularly by oil land miners) that annual expenditure is not the equivalent of statutory discovery. A claim lacking discovery is an incomplete and imperfect location, and cannot be held as against valid, adverse relocation because of cabin, lumber pile, or unused derrick, etc., placed thereon. But assessment work may, in proper cases, be counted in patent proceedings, and, after the issuing of the receiver's receipt in patent proceedings, no further annual expenditure is necessary upon the claim.

BRIDE AGED EIGHTY; GROOM NINETY-FOUR

LONDON, March 14.—A man who is said to be the last of England's old post boys, William Hennen, left the Midway union workhouse at the age of 94 years to marry Fanny Wadhams, aged 80 years. The couple met at the workhouse, and by subscription and gifts a comfortable home was furnished for them. The church was crowded, thousands assembling in the street to catch a glimpse of the interesting couple. The old people were loudly cheered as they drove up in a motor car.

The removal of the pauper dis-

qualification for old age pensions will not, apparently, make much difference with many aged inmates of workhouses. From many Irish poor law unions reports are being made of the number of inmates who, although otherwise qualified for the pensions, prefer to remain in the workhouses rather than attempt to live outside on 5 shillings a week. At the close of 1910 there were nearly 30,000 paupers in the workhouses in England and Wales eligible for old age pensions, and as yet not more than 5000 of these have applied for their discharge.

At the West Derby Liverpool board of guardians it was stated that 730 inmates of the workhouse eligible for pensions would not leave the house. In the Manchester union there are 437 persons in the workhouse qualified for pensions, and as yet not more than thirty-three have given notice of their intention to leave.

To those who have friends or relatives outside willing to receive them, the 5 shillings a week might appear sufficient. But many of the aged inmates have been in these institutions a long time. They are practically friendless; many are very feeble or bedridden, and to such as these the workhouse seems more attractive than the prospect of attempting in their old age to set up house, and live alone on a pittance just large enough to keep them alive.

CONGRESSMAN HAS DEPARTED TO ASSUME HIS DUTIES

Congressman Ed Roberts departed Sunday for Washington, D. C., to fill his seat in the lower house of congress. A large number of his friends escorted him to the train and sped him on his way. Mr. Roberts is going to Washington to work for the interest of the state of Nevada and will surely be heard from in the future.—Carson News.

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CHAS. LANTHALER.
2-23-2-29

NOTICE OF FORFEITURE.

To George Turin and Andy Piana, your heirs and assigns: You, George Turin, are hereby notified that the undersigned has expended in labor and improvements on the Marietta lode mining claim, situated in Tybo mining district, Nye county, Nevada, the sum of \$400 for the years 1907, 1908, 1909 and 1910, of which you are a one-third owner. I have also expended the sum of \$200 on the Maryland lode mining claim, situated in Tybo mining district, Nye county, Nevada, for the years 1907 and 1908, of which you are a one-half owner.

You, Andy Piana, I have expended the sum of \$200 in labor and improvements on the Marietta lode mining claim, situated in Tybo mining district, Nye county, Nevada, for the years 1907 and 1908, of which you are a one-third owner, under the provisions of Section 2324 of the Revised Statutes of the United States of America, concerning annual labor on mining claims. The location certificates of the above claims are duly recorded in the county recorder's office of Nye county, state of Nevada. Said expenditure was the amount necessary to hold said mining claims during the aforesaid years. And if within 90 days from the date of the first publication of this notice you fail or refuse to contribute your portion of such expenditure as co-owners, which amounts to \$600, and \$200 respectively to each of you, George Turin on the Marietta \$133.33 1-3; Maryland, \$100; Andy Piana on the Marietta, \$66.66 2-3, together with the cost of this advertisement your interest in said claims will become the property of the subscriber, your co-owner, who has made the expenditure and improvements as above mentioned.

Dated at Tonopah, Nevada, this 20th day of February, 1911.
M. ANTONIAZZA.
First pub. Feb. 20, 1911.
Last pub. May 22, 1911.

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